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Summary record of the 871st meeting
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Chairperson: Mr. Illescas (Spain)

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Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea (*continued*)

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08-39380 (E)

The meeting was called to order at 10.10 a.m.

Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea (*continued*) (A/CN.9/642, A/CN.9/645 and A/CN.9/658 and Add.1-13)

Draft article 37 (Issuance of the transport document or the electronic transport record)

1. *Draft article 37 was approved in substance and referred to the drafting group.*

Draft article 38 (Contract particulars)

2. **Mr.** Ibrahima Khalil **Diallo** (Senegal), referring to the proposed version of draft article 38 contained in the written comments by a group of African States (A/CN.9/658/Add.1, para. 15), called for the inclusion of additional information, specifically, the name of the consignee, the name of the ship, the ports of loading and unloading and the approximate date of delivery, in the list of contract particulars in draft article 38. Such information was essential for the performance of the contract.

3. **Mr. Elsayed** (Egypt) endorsed the proposal made by the representative of Senegal and stressed the need for providing details such as the place and date of issuance of the transport document, the name and address of the carrier, the value of the goods, the place of delivery of goods, a sufficient description of potentially dangerous goods and the number of originals of the document.

4. **Mr. Imorou** (Benin) said that his delegation firmly supported the proposal made by the representative of Senegal. As primarily a shipping country, Benin thought the additional information to be essential. Without knowing particulars such as the name of the ship, where the goods were loaded and the approximate date of arrival, the shipper could not take the necessary action and should therefore be provided with all relevant information.

5. **Ms. Wakarima Karigithu** (Kenya) endorsed the proposals made by the representatives of Senegal, Benin and Egypt.

6. **Ms. Malanda** (Observer for the Congo) said that her delegation also supported the addition of the particulars proposed by the representative of Senegal. She did not understand the reasons for omitting such basic information, which had been included in previous drafts until the tenth session of the Working Group.

7. **Mr. Ndzibe** (Gabon), **Mr. Lavambano** (Observer for Angola) and **Mr. Ousseimi** (Observer for the Niger) also supported the proposal presented by the representative of Senegal and contained in the joint written comments of a group of African States (A/CN.9/658/Add.1, para. 15).

8. **Mr. van der Ziel** (Observer for the Netherlands) explained that draft article 38 included only the mandatory particulars and allowed the commercial parties to agree on which additional particulars should be included in the transport document. In many cases, particulars such as the name of the ship, the name and address of the consignee, the ports of loading and unloading and the approximate date of delivery were simply not available at the moment of issuance of the transport document. For instance, in a multimodal transport contract the name of a ship onto which goods would be loaded after carriage from an initial inland point — which could take days — might not be known in advance, and even the ports used might be left to the carrier's discretion. Similarly, the name of the consignee was not considered mandatory, because the identity of the eventual buyer was sometimes unknown at the time the transport document was issued. With regard to the date of delivery, though estimates and notices of arrival to the consignee were customary in the maritime industry, it would be going too far to require inclusion of that information in the transport document. Furthermore, the shipper was under pressure to obtain a transport document as early as possible to present to the bank in order to obtain the purchase price; therefore, early issuance of the transport document was in the interest of the shipper.

9. **Ms. Czerwenka** (Germany) thanked the representative of the Netherlands for his explanation and requested further clarification of the idea that the contract particulars listed in article 38 were mandatory. She wondered whether inaccurate or missing information would render a transport document null and void.

10. **The Chairperson** said that draft article 41 might address the concern expressed by the representative of Germany.

11. **Mr. Ngoy Kasongo** (Observer for the Democratic Republic of the Congo) supported the proposal of the African States. Requiring more details relevant to the

goods being shipped — such as the name of the vessel in which the goods were transported, or the ports in which the goods were loaded or discharged — would be a useful supplement to the basic information listed in draft article 38, rendering it more precise.

12. **Mr. Miller** (United States of America) said that the concept underlying draft article 38 was to require information only on those aspects that were absolutely necessary. Many of the additions proposed would be counterproductive, resulting in more expensive transactions for the shipper and undermining the purpose of the draft convention. He found it ironic that delegations that had been defending the interests of shippers would favour provisions that would interfere with those interests in many cases. For the reasons explained by the representative of the Netherlands, his delegation opposed the inclusion of additional requirements in article 38.

13. In response to the questions raised by the representative of Germany, he noted that the items required under draft article 38 were indeed mandatory in a legally enforceable sense, though draft article 41, paragraph 1, preserved the legal validity of the transport document in the event of absence or inaccuracy of one or more of the contract particulars and therefore did not punish the shipper interests for a mistake made by the carrier. However, the draft convention did not purport to regulate all aspects of the contractual relationship between the carrier and the shipper; some aspects would be dealt with by national laws, and many national legal systems did indeed have provisions that governed what would happen if the carrier refused to include information in the document that the shipper had the right to demand. Under article 41, paragraph 3, the draft convention itself provided for the presumption of good order and condition of the goods at the time the carrier or a performing party received them if the contract particulars failed to state otherwise.

14. **Mr. Kim** In Hyeon (Republic of Korea) said that some of the additional particulars suggested in the African proposal were not usually fixed at the moment of issuance of the transport document. Those particulars might be included in the transport document on a voluntary basis, but they should not be covered by draft article 38. His delegation endorsed the views expressed by the representative of the Netherlands and the explanation given by the representative of the United States.

15. **Mr. Sandoval** (Chile) said that he understood that draft article 38 covered only the information that was required to issue the transport document, and his delegation supported the retention of the article as it stood, endorsing the views expressed by the representatives of the Netherlands and the United States. Any other particulars should be provided as part of a prior agreement between the shipper and the carrier.

16. **Mr. Hu** Zhengliang (China) said that the explanation given by the representative of the Netherlands was convincing, since the draft convention was a "maritime plus" convention. When a transport document or an electronic transport record was issued, some particulars were not known to the carrier or to the shipper. He also welcomed the Chairperson's reference to draft article 41, which confirmed that the absence of one or more particulars did not affect the legal validity of the transport document. Such a provision implied that the items listed in draft article 38 were not entirely mandatory. His delegation agreed with the African view to an extent, insofar as the consignee should, upon receipt of a transport document, be informed of the place of delivery of the goods; however, that piece of information did not need to be included in the transport document or the electronic transport record as such.

17. **Mr. Elsayed** (Egypt) said that, as legislators, the members of the Commission should include any elements that would make for greater clarity and precision. Information such as the name of the ship could prove valuable in the event of recourse to arbitration.

18. **Mr. Bigot** (Observer for Côte d'Ivoire) stressed that the omission or inaccuracy of any information that might be required by draft article 38 would not affect the validity of the transport document, as was made clear by draft article 41. The information the African States wished to see added to the list would facilitate trade. Shippers needed to know the place and at least the approximate date of delivery. There was no obvious reason why the inclusion of such information should entail higher costs.

19. **Ms. Traoré** (Observer for Burkina Faso) said that it was important to include the additional elements, especially for shippers in landlocked countries, who would need to have reliable information about ports of transit and delivery dates so as to be able to take

delivery of goods at the right time and in the right place.

20. **Ms. Slettemoen** (Norway), while in favour of the draft text as it stood, suggested, in a spirit of compromise, that the additional elements might be included on an explicitly non-mandatory basis.

21. **Mr. Delebecque** (France) said that the requirement to include further information in transport documents might prove counterproductive. It was not necessary to name the ship in such documents, which related essentially to the goods transported and not to the means used for that purpose. Draft article 22 already provided for the issue of time constraints, which depended on an express or implicit agreement between the parties.

22. **Mr. Sato** (Japan) said that additional particulars, such as the name of the ship and the ports of loading and unloading, would indeed be useful for trade but could only be included if they were known. Failure to provide that information should not be an obstacle to issuance of the transport document, while inclusion of the date of delivery in the list would necessitate some qualification. In view of the detailed and complicated conditions that would have to be introduced to qualify the proposed additions, it might be better to leave the list unchanged. He agreed with the representatives of the United States and China that a failure to meet any of the requirements of the draft article would not necessarily invalidate the transport document. That would depend on national law. The draft convention did not itself spell out the possible consequences of the breach of many of its provisions.

23. **Mr. Sharma** (India) recalled that the list of particulars had been finalized after lengthy discussion. While there was some merit in the proposal by the African States, he accepted the reasoning of the representatives of the Netherlands and the United States. Technically speaking, the requirements of the draft article were not mandatory pursuant to draft article 41, but that was not relevant to the current discussion. One further piece of information that would be useful and had not been mentioned was the place and date of receipt of goods, particularly in the light of draft article 33.

24. **Mr. Berlingieri** (Italy) said that information as to the place and date of receipt did indeed need to be included, since according to draft article 5, it would not be possible in its absence to determine whether the draft convention applied.

25. **Mr. Egbadon** (Nigeria) said that draft article 38 could not be considered in isolation from draft article 41. The requested information need only be supplied if it was available and would not be mandatory.

26. **Mr.** Ibrahima Khalil **Diallo** (Senegal) recalled that the Hamburg Rules adopted in 1978 listed in their article 15 a number of contract requirements that had not been included in the draft convention. It was indeed important for contracts to include all essential information, including the place and date of receipt of goods. While the subject of the contract was not ships but goods, it would be useful for the ships involved in the transport of the goods to be named.

27. **Mr. van der Ziel** (Observer for the Netherlands) said that the Hamburg Rules did indeed contain a longer list of requirements for contract particulars, but the main point on which the draft convention differed was that it called for inclusion of the name and address of the carrier. In 1978, before the development of electronic communication, the transport document had been an essential means of having the necessary data. Nowadays, once the carrier had been identified, it was easy to obtain any information required. As all the larger carriers had websites that offered goods tracking systems, it was no longer so necessary to include such data in transport documents. A further consideration was that for information to be included, it had to be available, and since much of it only became so in the course of the voyage, such a requirement might militate against the early issuance of travel documents. That was particularly true in regard to the place of delivery, as shippers did not always know where goods would finally be unloaded. In addition, the shipper could be a documentary shipper, who might prefer the name of the shipper to remain confidential. As for the place of receipt of goods, since if it were unknown there could be no transport, there was no need to mention it: it was central to any contract of carriage.

28. **Ms. Downing** (Australia) recognized the usefulness of naming the place of receipt and delivery and pointed out, in response to the representative of the Netherlands, that in cases where, for example, the place of delivery was not known, draft article 41 would apply.

29. **Mr. Mollmann** (Observer for Denmark) said that in cases like that cited by the representative of Burkina

Faso, it would be left to the carrier and the shipper to agree on the information to be included in the contract; it would not be practical to make any mandatory provision to that effect. He did not agree with the representative of Australia regarding the applicability of draft article 41, which simply stated that deficiencies in respect of contract particulars would not affect the validity of the transport document. Such deficiencies might have other consequences under national law that would not be alleviated by that draft article.

30. **Ms. Talbot** (Observer for New Zealand) said that it might be useful to hold informal consultations in order to address the suggestions made by the representatives of Norway and Japan.

31. **Ms. Mbeng** (Cameroon) stressed that her country like most African countries was at the receiving end of trade and would therefore find it very useful for the contract particulars to include the name and address of the consignee. That information should be mandatory and should be included in the list of requirements in the draft article.

32. **Mr. Morán Bovio** (Spain) stressed that it was important to bear in mind that the aspects governing the implementation of the contract of carriage, as provided for in draft article 5, were not necessarily contained in the transport document. His delegation would prefer to retain the current text of draft article 38, since the inclusion of additional contract particulars could be problematic.

33. **Ms. Carlson** (United States of America) supported the proposal of the representative of New Zealand that informal consultations should be held to produce a carefully nuanced draft that met the various concerns that had been raised.

34. **Ms. Czerwenka** (Germany) said that the transport document, as defined in draft article 1, paragraph 14 (b), evidenced or contained a contract of carriage. It followed that the key elements should be reflected in the transport document. For that reason, her delegation supported the inclusion of a longer list of contract particulars in draft article 38 and endorsed the proposal of the representative of New Zealand that informal consultations should be held.

35. **Mr. Elsayed** (Egypt) said that his delegation could also support the holding of informal consultations to amend draft article 38. He would urge the group entrusted with that task to ensure that its list of additional contract particulars included the name of the ship.

36. **Mr. Mayer** (Switzerland) said that his delegation could agree to the inclusion of a longer list of contract particulars in draft article 38, provided the necessary qualifications were also included. The parties should not be forced to agree on the ports of loading and unloading, for example, at the time of the issuance of the transport document. Reference to those ports in draft article 38 should therefore be followed by wording such as "if specified by the parties". Similarly, draft article 38 should allow the place of receipt and delivery, if included, to be determined at a later stage by the parties concerned.

37. **Mr.** Ibrahima Khalil **Diallo** (Senegal) reiterated that the additional information that his delegation wished to see included in the contract particulars consisted of the name and address of the consignee, the name of the ship, the ports of loading and unloading and the approximate date of delivery.

38. **Mr. Kim** In Hyeon (Republic of Korea) recalled that draft article 38 was closely related to the evidentiary effect of the contract particulars in draft article 43. In that connection, he noted that the draft convention, unlike the Hague-Visby Rules, allowed additional contract particulars in the transport document other than those referred to in draft article 38 to trigger the evidentiary effect in draft article 43, subparagraphs (a) and (b).

39. **Mr. Sharma** (India) asked that inclusion of place of receipt should also be considered in informal consultations.

40. **Mr.** Ibrahima Khalil **Diallo** (Senegal) noted that a consensus should be possible since a clear majority of the delegations wished to include additions to draft article 38 and to provide such additions with the necessary qualifications. However, if a consensus could not be reached to include all of those elements, he hoped that his delegation's original proposal could be approved as the consensus decision.

41. **The Chairperson** said he took it that the Commission wished to hold informal consultations on draft article 38 to consider not only the proposals of Senegal and Egypt hit also the inclusion of the place and date of receipt and the necessary qualifications.

However, if no comprise solution was reached, draft article 38 would be retained in its current form.

42. *It was so decided.*

The meeting was suspended at 11.55 a.m. and resumed at 12.20 p.m.

Article 39 (Identity of the carrier)

43. **Mr. Elsayed** (Egypt) suggested that paragraph 2 of article 39 should be redrafted in the interests of legal certainty, since it allowed too much leeway for the carrier to evade responsibility.

44. **Mr. Sato** (Japan) said that his delegation was dissatisfied with the text of draft article 39 but, since it was a part of a compromise package, had nevertheless decided to accept it.

45. *Draft article 39 was approved in substance and referred to the drafting group.*

Draft article 40 (Signature)

46. **Ms. Czerwenka** (Germany), drawing attention to her delegation's written comments (A/CN.9/658/Add.11, para. 17), noted that draft article 40, paragraph 2, stipulated that an electronic transport record must include an electronic signature of the carrier and set forth a few requirements. As her delegation interpreted that paragraph, more specific requirements for electronic signatures could be imposed by national law. On that basis, her delegation could accept paragraph 2 of draft article 40.

47. **Ms. Downing** (Australia) said that her delegation could accept draft article 40 on the basis of the interpretation provided by the representative of Germany.

48. **Mr. Sato** (Japan) said that his delegation fully endorsed that interpretation of draft article 40 and would also welcome any further clarification of the draft article.

49. **Ms. Carlson** (United States of America) said that her delegation had the same interpretation as the representative of Germany. That article was one of the places where the language of the draft convention was not exhaustive, and matters not provided for were left for national law to determine.

50. *Draft article 40 was approved in substance and referred to the drafting group.*

Draft article 41 (Deficiencies in contract particulars)

51. **Mr. Imorou** (Benin) suggested that "*erreurs*" or "*omissions*" might be more appropriate than "*lacunes*" in the title of the French version of the text.

52. *Draft article 41 was approved in substance and referred to the drafting group.*

Draft article 42 (Qualifying the information relating to the goods in the contract particulars)

53. **Mr. van der Ziel** (Observer for the Netherlands), noting that the term "container" was used several times in draft article 42, said that the term should be expanded to include road and rail cargo vehicles as well, in order to make the language consistent with draft article 61, paragraph 2, which had been based on the so-called "container clause" of the Hague-Visby Rules. Under draft article 61, paragraph 2, each package in a container or road or railroad cargo vehicle counted as a unit for limitation purposes, provided the packages were enumerated in the contract particulars. That being the case, the carrier should be able to qualify the enumeration.

54. **Mr. Berlingieri** (Italy), noting that the term "closed container" was used in draft article 42, paragraphs 3 and 4, asked whether the adjective would also be applied to road or railroad cargo vehicles under the Netherlands' proposal.

55. **Mr. van der Ziel** (Observer for the Netherlands) said that "closed" should also apply to road and rail cargo vehicles because in the context of the article the term meant that the contents were not visible from outside the container.

56. **Mr. Miller** (United States of America) said that his delegation agreed with the proposal by the Netherlands.

57. **The Chairperson** said he took it that the Commission accepted the proposal to add a reference to a road or railroad cargo vehicle whenever a container was mentioned in draft article 42.

58. **Mr. Estrella-Faria** (International Trade Law Division) said that it would be possible to avoid repeating the words "road or railroad cargo" each time by adding a general definition of "vehicle" to draft article 1, which would indicate that "vehicle" meant "road or railroad cargo vehicle". The drafting group

could take up the matter when it met to harmonize all the language versions of the text.

59. **The Chairperson** said that the drafting group could consider that suggestion.

60. *Draft article 42, as amended, was approved in substance and referred to the drafting group.*

Draft article 43 (Evidentiary effect of the contract particulars)

61. **The Chairperson** recalled the statement by the representative of the Republic of Korea during the debate on draft article 38 that all the contract particulars in the transport document, and not just those listed in draft article 38, had evidentiary effect pursuant to draft article 43, subparagraphs (a) and (b).

62. **Mr. Elsayed** (Egypt) said that the wording of subparagraph (c) (ii) opened the door for substitution of goods and smuggling, and in fact similar cases had been heard before Egyptian and Jordanian courts. He proposed that the words "but not" before the phrase "the identifying numbers of the container seals" should be replaced by "and".

63. **Mr. Mollmann** (Observer for Denmark) said that the draft article was one of the instances where his delegation doubted whether it was appropriate to add the term "road and railroad cargo vehicles" because of the practical implications of the article, which was aimed at actual containers. Road vehicles often displayed an identification number, or at least a licence plate, but he did not know if that practice extended to railroad cargo vehicles. Regarding the suggestion of the representative of Egypt that the identifying numbers of the container seals should also be considered as conclusive evidence, the text was the result of extensive negotiation. The current wording was based on practical considerations, in that the carrier did not have full control over the seals; additional seals might be placed by customs authorities, for example. His delegation therefore favoured retaining the text as it stood.

The meeting rose at 1 p.m.